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DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

R. M. T. J.
P. II.

FILE: B-190080

DATE: December 12, 1977

MATTER OF: Davisville Construction Co.

DIGEST:

Agency properly rejected as nonresponsive bid with bid bond \$4,700 less than required since deficiency is not de minimis and bid bond cannot be corrected because mistake in bid procedures are not available to make a nonresponsive bid responsive.

Davisville Construction Co. (Davisville) protests rejection of the low bid it submitted pursuant to invitation for bids (IFB) No. GS-00B-03399 issued by the Public Buildings Service, General Services Administration (GSA). The IFB called for bids for the replacement of a roof on a Federal building in Philadelphia and required that all bids be accompanied by a bid guarantee in the amount of 20 percent of the bid price or \$3,000,000 whichever is less.

While Davisville indicated on the Standard Form 21 its intention to provide a bid bond in the amount of 20 percent of its bid price of \$47,000, the bid guarantee as submitted was in the amount of "10% of amount bid." Its bid was rejected as nonresponsive and Davisville protested to this Office.

Davisville contends that the "10%" bid guarantee was the result of a typographical error made by its bonding company and that its bid history shows that the bonding company always provides a 20 percent bond on its bids, thereby indicating a typographical error in this case. Davisville points out that GSA's determination will cost the Government \$4,953 more to obtain performance from the next low bidder rather than by accepting the \$47,000 bid of Davisville.

Although the bid bond in the amount of 10 percent of bid price may have resulted from a typographical error, the bid as submitted was clearly nonresponsive to the requirements of the IFB. The mistake in bid procedures are not available to correct a nonresponsive bid in order to make it responsive. Wagner Moving and Storage, B-185725, April 8, 1976, 76-1 CDP 237; Bayshore Systems Corporation, 56 Comp. Gen. 83 (1976), 76-2 CPD 395.

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Section 1-10.103.4 of the Federal Procurement Regulations (1964) provides that a bid not complying with the bid guarantee requirements must be rejected unless one of four specified situations permitting waiver exists. Three of these situations clearly do not exist in this case. However, waiver of noncompliance is permissible:

"(b) Where the amount of the bid guarantee submitted though less than the amount required by the invitation for bids, is equal to or greater than the difference between the price stated in the bid and the price stated in the next higher acceptable bid."

In this case, the next higher acceptable bid was \$4,953 higher than Davisville's price. Ten percent of Davisville's bid price of \$47,000 is \$4,700. Thus, waiver of noncompliance is not permissible in this case.

We recognize that in Arch Associates, Inc., B-183364, August 13, 1975, 75-2 CPD 106, we held that the agency properly accepted a bid accompanied by a \$55,000 bid bond even though the bond was \$284 less than required. It was stated that the discrepancy was de minimis and could be waived as a minor informality under Armed Services Procurement Regulation § 2-405 (1975 ed.). However, in the instant case, the difference between the bid bond required and the bid bond furnished is \$4,700 or 100 percent rather than the \$284 and 0.5 percent in the Arch Associates case. See Capital Coatings, B-186606, June 28, 1976, 76-1 CPD 416. While Davisville's bid bond is only \$253 less than the difference between its bid price and that of the next higher acceptable bid, we believe that the de minimis rule should not be applied here for purposes of determining whether a waiver of a noncompliant bid bond is permissible under FPR § 1-10.103.4. Such an application would require ignoring the material discrepancy in the bid bond as submitted.

The monetary saving represented by Davisville's price does not outweigh the public interest in the strict maintenance of the competitive bidding procedures. General Electric Company, B-184873, May 4, 1976, 76-1 CPD 298.

Accordingly this protest is denied.


Deputy Comptroller General
of the United States